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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES DEARING,	)	
	)	Case No.:
Plaintiff,	)	
	)	COMPLAINT FOR DAMAGES
vs.	)	
	)	JURY DEMANDED
PORTFOLIO RECOVERY	)	
ASSOCIATES, LLC, a Delaware	)	
limited liability company,	)	
	)	
Defendant.	)	

**I. INTRODUCTION**

Plaintiff James Dearing (“Plaintiff”), a Washington resident, brings this action by and through his undersigned counsel, against Defendant Portfolio Recovery Associates, LLC (“Defendant PRA”), and alleges the following:

////

COMPLAINT - 1

**II. JURISDICTION AND VENUE**

2.1 Jurisdiction of this Court arises under 15 U.S.C. § 1692k (d), 28 U.S.C. § 1337 and 28 U.S.C. § 1331. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).

2.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1291(b)(2).

**III. NATURE OF THE ACTION**

3.1 Plaintiff brings this action for damages for Defendant PRA's actions of using unfair and unconscionable means to collect a debt.

3.2 Defendant PRA's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collection Practices Act ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

3.3 Plaintiff is seeking damages, declaratory, and injunctive relief.

**IV. PARTIES**

4.1 Plaintiff is a natural person, a resident of Washington State, and is a "Consumer" as defined by 15 U.S.C. § 1692(a)(3).

4.2 Defendant PRA is a "debt collector," as defined by 15 U.S.C. § 1692a(6).

1 4.3 All acts done by Defendant PRA were done on its own behalf.

2 4.4 Defendant PRA is a Delaware limited liability company engaged in the  
3 business of collecting debts in Washington State.

4 4.5 Defendant PRA's headquarters are located at 120 Corporate Blvd, Suite  
5 100, Norfolk, VA 23502-4952.

6 4.6 Defendant PRA is a "collection agency," as defined by RCW  
7 19.16.100(4)(d).

8 **V. ALLEGATIONS OF FACT**

9 5.1 Sometime prior to August 2016, Plaintiff allegedly incurred an  
10 obligation to Comenity Bank.

11 5.2 The Comenity Bank obligation arose out of a transaction in which  
12 money, property, insurance or services, which are the subject of the  
13 transaction, are primarily for personal, family, or household purposes.

14 5.3 The alleged Comenity obligation is a "debt" as defined by 15 U.S.C. §  
15 1692a(5).

16 5.4 On or about August 29, 2016, Plaintiff's alleged Comenity Bank debt  
17 was sold to Defendant PRA.

18 5.5 In June 2018, Defendant PRA sued Plaintiff in the Spokane County  
19 Superior Court.

1        5.6    In June 2018, Defendant PRA obtained a default judgment against  
2            Plaintiff.

3        5.7    In August 2018, Defendant PRA obtained a writ of garnishment against  
4            Plaintiff's financial institution.

5        5.8    At or about the same date that the writ of garnishment was sent to the  
6            Plaintiff's financial institution, Defendant PRA, through its counsel,  
7            also sent an exemption claim form to the Plaintiff.

8        5.9    The exemption claim form sent to Plaintiff is a "communication" under  
9            15 U.S.C. § 1692a(2).

10       5.10   RCW 6.27.130 requires that an exemption claim form be served or  
11            mailed to the judgment debtor.

12       5.11   The exemption claim form found at RCW 6.27.140 is a mandatory form  
13            that must be printed or typed in no smaller than size twelve-point font  
14            and contain the statutorily-required contents.

15       5.12   The RCW 6.27.140 exemption claim form contains check boxes for  
16            claiming specific exemptions for money in a financial institution,  
17            including the following:

18                            IF BANK ACCOUNT IS GARNISHED:  
19                            [ ] The account contains payments from:  
20                            [ ] Temporary assistance for needy  
                                 families, SSI, or other public  
                                 assistance. I receive \$ . . . . . monthly.

- 1                   [ ] Social Security. I receive \$ . . . . .  
                            monthly.
- 2                   [ ] Veterans' Benefits. I receive \$ . . . . .  
                            monthly.
- 3                   [ ] Federally qualified pension, such as a  
4                              state or federal pension, individual  
                            retirement account (IRA), or 401K  
5                              plan. I receive \$ . . . . . monthly.
- 6                   [ ] Unemployment Compensation. I  
                            receive \$ . . . . . monthly.
- 7                   [ ] Child support. I receive \$ . . . . .  
                            monthly.
- 8                   [ ] Other. Explain . . . .
- 9                   [ ] \$2,500 exemption for private student  
                            loan debts.
- 10                  [ ] \$500 exemption for all other debts.
- 11                  IF EXEMPTION IN BANK ACCOUNT  
12                  IS CLAIMED, ANSWER ONE OR  
13                  BOTH OF THE FOLLOWING:
- [ ] No money other than from above  
                            payments are in the account.
- [ ] Moneys in addition to the above  
                            payments have been deposited in the  
                            account. Explain . . . .

14                  5.13 Defendant PRA removed two of the exemptions from the exemption  
15                              claim form.

16                  5.14 The removed exemptions are those which allow for: 1) exemption of  
17                              \$2500 in student loan money; and 2) the \$500 cash exemption.

18                  5.15 Defendant PRA's removal of these exemptions was intentional and  
19                              systematic.

1        5.16 Defendant PRA has sent out at least hundreds of exemption claim forms  
2            to Washington residents with the aforementioned exemptions removed.

3        5.17 Defendant PRA's removal of the exemptions from the checkbox list  
4            makes it more difficult for judgment debtors to claim exemptions.

5        5.18 Removing the exemptions that may be claimed by checking a box may  
6            influence how and whether a consumer will respond to a garnishment.

7                            **VI. FIRST CAUSE OF ACTION**  
8        **Violations of the Fair Debt Collection Practices Act 15 U.S.C. §§ 1692e and**  
9                            **1692f, *et seq.***

10       6.1 Plaintiff repeats, reiterates, and incorporates the allegations contained  
11            in the paragraphs above herein with the same force and effect as if the  
12            same were set forth at length herein.

13       6.2 Defendant PRA's debt collection efforts attempted and/or directed  
14            towards Plaintiff violated 15 U.S.C. §§ 1692e and 1692f of the FDCPA.

15       6.3 15 U.S.C. § 1692e states that a debt collector may not use any false,  
16            deceptive, or misleading representation or means in connection with the  
17            collection of any debt.

18       6.4 15 U.S.C. § 1692f states that a debt collector may not use any unfair or  
19            unconscionable means to collect a debt.  
20  
21

6.5 Defendant PRA's removal of meaningful information from the exemption claim form is unfair, unconscionable, and violates 15 U.S.C. § 1692f.

6.6 By reason thereof, Defendant PRA is liable to Plaintiff for judgment that Defendant PRA's conduct violated 15 U.S.C. §§ 1692e and 1692f of the FDCPA, actual damages, statutory damages, costs and attorney's fees.

## **VII. REQUEST FOR PRESERVATION OF EVIDENCE**

7.1 Preserve all forms of electronic data, regardless of where the data exists, without modification to or deletion of any potentially discoverable data;

7.2 Suspend all procedures that may alter or delete computer data;

7.3 Prevent deleting, overwriting, defragmenting, or compressing the data;

7.4 Preserve all archived back-up tapes and ensure that (a) if archive tapes are rotated, the relevant tapes are removed from the rotation; and (b) if backups are made to hard drives, preserve the hard drive as well;

7.5 Preserve the contents of all hard drives, network drives, tape drives, optical drives, floppy disks, CD and DVD drives, and all other types of drives or media that are within the possession, custody, or control

of all people who have knowledge of relevant facts and those who work with them, such as assistants;

7.6 Preserve the contents of all information on portable computers—such as laptops, palmtops, or tablets—used by those people, as well as home computers, if these are used for work purposes;

7.7 Preserve the contents of all data on computers that were used since the limitations period on the lawsuit began (for example; five years prior to filing) but that are no longer in use; and

7.8 Disclose electronic information in the Rule 26 initial disclosures.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant PRA as follows:

8.1 Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) of \$1,000.00;

8.2 Awarding Plaintiff actual damages sustained under the FDCPA;

8.3 Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3);

8.4 Declaratory judgment that Defendant PRA's practices complained of herein violate the FDCPA;



1 8.5 Injunctive relief permanently enjoining Defendant PRA's practices  
2 complained of herein; and

3 8.6 Such other and further relief as the Court may deem just and proper.

4 DATED this 6<sup>th</sup> day of May, 2019.

5 Kirk D. Miller, P.S.

6 /s Kirk D. Miller

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